Supreme Court, U.S.
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No. ____

In The
Supreme Court of the United States

ELIZABETH STAUBER

and

JACK and TIMOTHY McGRATH,
Petitioners,

v.

JAMES McGRATH,
Respondent.

On Petition for Writ of Certiorari to the Fifth District Court of Appeals of Ohio

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a state court contravenes the Full Faith and Credit Clause by declining to enforce another state's judgment on the basis that the foreign judgment conflicts with a prior judgment of the forum state.

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PETITION FOR A WRIT OF CERTIORARI

Elizabeth Stauber and Jack and Timothy McGrath pray that the Supreme Court grant a writ of certiorari to review the judgment of Ohio's Fifth District Court of Appeals.

OPINIONS BELOW

The decision of the Fifth District Court of Appeals is unreported and is set forth at Appendix A, pp. 1a-15a. The decision of the Fairfield County Common Pleas Court is unreported and is set forth at Appendix B, pp 16a-19a. The 4-3 decision of the Supreme Court of Ohio denying discretionary review is reported at 117 Ohio St.3d 1477, 884 N.E.2d 1109 (2008) (Table), and is set forth at Appendix C, p. 20a.

JURISDICTION

The Supreme Court of Ohio denied discretionary review on April 23, 2008. [Pet. App. C]. This Petition is timely because it has been filed within 90 days of that date. The Fifth District Court of Appeals decision was issued on November 19, 2007. [Pet. App. A]. This Court has jurisdiction to review the Fifth District's decision by writ of certiorari pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

This case involves an interpretation of the Full Faith and Credit Clause of the United States Constitution, Article IV, Section 1, which reads: "Full Faith and Credit shall be given in each State to the

public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof."

STATEMENT OF THE CASE

This Full Faith and Credit Clause case involves a sister-state judgment that has intervened between judgments of the forum state. In each state, the principal question was whether respondent James McGrath was the father of petitioners Jack and Timothy McGrath, and therefore owed them support. The controversy originated and developed into an initial judgment in Ohio, moved to California and resulted in entry of a conflicting judgment, then returned to Ohio, which declined to recognize the California outcome.

As the matter stands without this Court's review, California treats James McGrath as the father, but Ohio treats him as a stranger to Jack and Timothy. The boys are eight-year-old twins who were born to Elizabeth Stauber. James McGrath's status as the father is especially important because each boy has a serious health condition and James's status affects whether the twins can access reasonably priced health insurance.

The twins' effort to establish that James McGrath is their father began in an Ohio courtroom after he revoked an acknowledgment of paternity one day before the acknowledgment became irrevocable. By the time the Ohio trial court ordered DNA testing for

Elizabeth and the twins, the three had moved to California to start a life without James McGrath.

Based on Elizabeth's unwillingness to submit herself or her sons to DNA testing, the Ohio trial court ruled that James McGrath was not the twins' father. An appeal, remand, and second appeal resulted in the same outcome—a final order declaring that James McGrath is not the father of Jack and Timothy.

In California, Elizabeth initiated a support action against James McGrath. Following a hearing at which James McGrath specially appeared to contest personal jurisdiction, the Los Angeles County Superior Court found that the Ohio proceedings had lacked suitable due process protections for the twins, and adjudicated James McGrath the father of Jack and Timothy. Over a period of months, the Superior Court issued a series of support judgments against him.

Back in Ohio, Elizabeth hired an attorney to enforce the California judgments in both Fairfield County and Franklin County. She also initiated a separate suit to establish the paternity of Jack and Timothy. The Franklin County Common Pleas Court domesticated the judgments, but the Fairfield County Court of Common Pleas did not. Because James McGrath apparently has no property in Franklin County, the Fairfield County litigation became the focus of the effort of Elizabeth and the twins to enforce the California judgments in Ohio.

At each step of this subsequent litigation, Elizabeth and the twins pointed to the Full Faith and Credit

Clause as mandating that Ohio's courts recognize the California judgments.

In response to the efforts to domesticate the four California judgments, James McGrath filed a motion to consolidate the actions, and argued that California's view of the Full Faith and Credit Clause meant that the Ohio trial court had no full-faith-and-credit obligation towards the California judgments. He argued that, because the California court "failed to honor a legitimate final appellate order" of an Ohio court "in violation of the full faith and credit provisions" of the Constitution, the Ohio court could not now honor the intervening California judgment without "void[ing] the prior Ohio judgment."

Elizabeth and the twins responded that the California orders were due full faith and credit in Ohio, arguing that the California judgments were "valid orders entered by a sister state that must be given full faith and credit."

When James McGrath later moved for relief from the California judgments under Ohio Rule of Civil Procedure 60(B), he pointed to California's purported defiance of the Full Faith and Credit Clause as a reason the Ohio court should give him Rule 60(B) relief. His motion claimed that the initial Ohio judgments were "res judicata and entitled to full faith and credit" in the second Ohio litigation.

Elizabeth and the twins responded that the clause compelled Ohio to recognize the California judgments. "The California judgments should be given full faith

and credit here in Ohio [because the California proceedings complied with due process requirements.]"

The Ohio trial court ruled in favor of James McGrath, on the premise that the original Ohio finding of no paternity "was entitled to full faith and credit" and that the California judgments were therefore "void." [Pet. Appx. at 18a]. Based on that reasoning, the trial court vacated the California judgments filed for domestication in Ohio.

Elizabeth and the twins appealed to Ohio's Fifth District Court of Appeals. Their first assignment of error challenged the trial court's full-faith-and-credit ruling: "The trial court erred in granting Defendant McGrath's motion for relief from the California judgment because the California judgments were entitled to full faith and credit." More specifically, they argued that the trial court's decision declaring the California judgments void failed to accord the California judgments the credit that Article IV, Section 1, demands. "[T]he trial court below . . . held inapplicable a decision of California—a decision entitled to full faith and credit in the courts of Ohio unless made in violation of due process . . . ."

Assessing these arguments, the Ohio appellate court first recognized that this case presents a three-step full-faith-and-credit problem. The two-judge majority opined that the trial judge in the second Ohio action "could not enforce any order contrary to" the first Ohio judgment. [Pet. App. at 12a]. Therefore, the majority did "not agree" that the California judgments were entitled to full faith and credit. [*Id.* at 13a].

The dissenting judge also noticed the three-forum full-faith-and-credit puzzle posed by the appeal. The dissenter properly analyzed the appeal in terms of whether James McGrath had raised his own full-faith-and-credit challenge on appeal in California. "[James McGrath] chose not to contest, via appeal, the validity of the California Court's decision not to afford the Ohio Court's decree full faith and credit, despite having appeared and defended in California on the minors' complaint there." [*Id.* at 14a (Hoffman, J., dissenting)]. The dissenting judge (echoing this Court's guidance on the subject) concluded that James McGrath was "asserting his argument in the wrong forum" because "[h]e should have made the argument via appeal in California." [*Id.*].

Elizabeth and the twins sought discretionary review in the Supreme Court of Ohio. With three Justices voting to review the case (four votes are needed to secure review), the court declined review over the federal constitutional question of what credit is due a second-in-time judgment in a forum when that forum issued the first-in-time judgment.

Elizabeth and the twins now seek review in this Court because Ohio's Fifth District wavered from the constitutional command that it give full credit to the subsequent California judgments even though those judgments conflicted with an earlier Ohio judgment.

REASONS WHY THE PETITION SHOULD BE GRANTED

I. The Full Faith and Credit Clause requires recognition of a sister-state judgment that intervenes between judgments of the forum state.

The three-step conflict-of-judgments problem posed to the Ohio appellate court is nothing new and, outside of the subset of cases where the first and third forum are the same, there is general agreement nationwide that the second-in-time judgment is due full faith and credit in the third forum. *See, e.g., Treinies v. Sunshine Mining Co.*, 308 U.S. 66 (1939); 50 C.J.S. *Judgments* § 973 (2008).

But states have long resisted the last-in-time rule when it is their own judgment that loses out to the second judgment. As then-professor Ginsburg wrote in 1969, "Resistance to the [Supreme] Court's last-in-time rule has been considerable. It occurs most frequently where recognition of the second judgment is requested in the state which rendered the first judgment." *See* Ruth B. Ginsburg, *Judgments in Search of Full Faith and Credit: The Last-in-Time Rule for Conflicting Judgments*, 82 Harv. L. Rev. 798, 800 (1969).

Justice Ginsburg predicted that state resistance to this Court's last-in-time holdings would "continue to generate occasional unfortunate conflicts between state courts until it is definitively resolved by paramount federal authority," and—therefore—that the time was "ripe for a further statement" from this Court, even in 1969. *Id.*

At the time of the 1969 article, Justice Ginsburg noted state supreme court decisions from Arizona, Nevada, Washington, and Virginia that endorsed an exception to the last-in-time rule when the first-in-time decision issued from a court in their state. *Id.*, at 800 n.12.

Since that writing, at least five other state appellate decisions have likewise departed from the Full Faith and Credit Clause by refusing to follow the last-in-time rule when the initial decision issued from that state's judiciary. *See Medveskas v. Karparis*, 161 Vt. 387, 395, 640 A.2d 543, 547 (1994) (rejecting effort to enforce Massachusetts custody and support judgment "because the Massachusetts order denied full faith and credit to the [earlier] Vermont order"); *Smith v. Smith*, 606 So. 2d 164, 165 (Ala. App. 1992) ("Alabama courts are not required by the full faith and credit clause to give recognition to a judgment of a sister state which judgment is in direct conflict with an earlier, non-modifiable, final, valid, Alabama judgment . . . ."); *Stuart v. Livles*, 210 Cal. App. 3d 1215, 1221 (1989) ("the full faith and credit clause does not require the California courts to ignore a [prior] California judgment" in light of an intervening Colorado judgment) (reversing lower court); *Klumpner v. Klumpner*, 182 Ill. App. 3d 22, 32, 537 N.E.2d 914, 921 (1989) ("notwithstanding the general rule that where inconsistent judgments exist, the full faith and credit clause requires the latest judgment to be controlling in a third action between the parties . . . we believe that [the rule is inapplicable] where child custody and visitation rights are involved") (reversing lower court); *Jensen v. Barnes*, 33 Colo. App. 333, 336, 519 P.2d 1223, 1224 (1974) ("The general rule is that

when courts of different jurisdictions have reached different results on the same issue, the later judgment controls. . . . However, it is also the rule that when one of the conflicting decisions was entered by a court of the state in which the current action is pending, that decision takes precedence over the court of a sister state.").

The decision from Ohio adds another state to the roster of "unfortunate conflicts" between sister states. And the Ohio decision has the further unfortunate consequence of telling the twins that James McGrath is not their father and threatening their access to needed health insurance.

The Ohio court described its holding in words that echo Justice Ginsburg's description of problem cases. "As stated, . . . there is a final judgment entered by a court of competent jurisdiction, affirmed by this court, and not appealed to the Ohio Supreme Court, entered prior to the California order. The trial court could not enforce any order contrary to this Ohio judgment." *Stauber v. McGrath* [Pet. App. at 12a]. The court reiterated this point: "The California judgment is simply not enforceable in Ohio." [Pet. App. at 13a].

Resistance to the full-faith-and-credit command that a state must enforce a sister state's judgment even when circumstances compelled the sister state to withhold full faith and credit from the initial judgment has now percolated into the secondary authorities. For example, the most recent version of the Witkin treatise for California law acknowledges the "general rule" that "makes the later judgment conclusive in a third action," but states that a "different rule applies where

one of the conflicting judgments was entered by the court in which the current action is pending . . . ." 7 B.E. Witkin, et al., Witkin California Procedure § 311 (4th ed. 1997 & Supp. 2007). Likewise, the Corpus Juris Secundum entry for conflicting judgments adopts the rogue rule that Justice Ginsburg criticized in 1969: "the full faith and credit clause of the federal Constitution does not require a state to give recognition to a judgment of a sister state in opposition to an earlier judgment of its own courts." 50 C.J.S. Judgments, § 973 (2008).

The growing acceptance of this interpretation of the Full Faith and Credit Clause strikes at the heart of our constitutional unity. If full faith and credit is no more than a suggestion of comity, the unifying purpose of the rule is lost. The Constitution welds the states into one entity for purposes of cross-border judgments. State courts that refuse full faith and credit to a sister state's judgment weaken the bond among the states.

Decisions such as the Ohio judgment also rest uneasily in the shadow of this Court's statements in *Morris v. Jones*, 329 U.S. 545 (1947), and *Sutton v. Leib*, 342 U.S. 402 (1952). *See* 329 U.S. at 552 ("As to respondent's contention that the Illinois decree, of which petitioner had notice, should have been given full faith and credit by the Missouri court, only a word need be said. . . . [T]he place to raise that defense was in the Missouri proceedings."); 342 U.S. at 407 (observing that a New York annulment of a Nevada marriage is "entitled to full faith," even in Nevada).

This Court's statements in *Morris* and *Sutton* should guide all courts to recognize a last-in-time

judgment even when the first judgment issued from the court that is asked to recognize the later judgment. But, as Justice Ginsburg explained in 1969, an "assiduous" parsing of dictum and holding leaves a narrow passage for state courts to follow a rule of "we owe no credit to a state that did not credit our earlier judgment." *See* Ginsburg, *Judgments in Search*, at 810-11 (describing the statement in *Sutton* as dictum and noting that the first judgment was never raised as a defense in the second action in *Morris*). Indeed, the Vermont Supreme Court explicitly noted what it viewed as a hole in this Court's full-faith-and-credit jurisprudence when it refused to enforce a sister-state judgment that conflicted with an earlier Vermont judgment. *See Medveskas*, 161 Vt. 387, 394, 640 A.2d 543, 546 (1994) (noting that this Court has never addressed the last-in-time rule where the first forum refuses to enforce a second forum's judgment conflicting with an earlier judgment of the first forum, where the first judgment was raised as a defense in the second forum).

Beset by their interstate dilemma arising from such misinterpretations, Petitioners urge this Court to clarify the transformative power the founders embedded in the Full Faith and Credit Clause to meld the several states into a "single nation." *Milwaukee Cty. v. M.E. White Co.*, 296 U.S. 268, 277 (1935).

Decisions since *Milwaukee County, Morris,* and *Sutton* have further strengthened the implication of those cases—that a forum state must give full credit to a subsequent decision of another state, even if it conflicts with the forum state's initial judgment. *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S.

518 (1986), although applying the Full Faith and Credit Act to a federal judgment, illustrates the point. When faced with a federal court order that disregarded an intervening state judgment that itself conflicted with an earlier federal judgment, this Court held that any challenge to the state court's treatment of the first federal judgment "must be pursued by way of an appeal through the state-court system and certiorari from this Court." *Id.* at 525. More recently, this Court has labeled the full faith and credit obligation as to judgments "exacting." *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998); *see also Franchise Tax Bd. v. Hyatt*, 538 U.S. 488, 494 (2003) (restating the "exacting" principle of *Baker*).

Legal commentary also emphasizes the unyielding command of the Full Faith and Credit Clause, even when a state is asked to recognize a judgment that conflicts with its own earlier judgment. One commentator has described the full-faith-and-credit obligation as an "iron law," and noted that state-court recalcitrance is most pronounced when the first and third fora are the same. *See* William Reynolds, *The Iron Law of Full Faith and Credit*, 53 Md. L. Rev. 412, 412, 417 (1994). Another commentator—in an earlier edition of his treatise—states the general last-in-time rule without exception for the identity of the first forum. "When two contradictory judgments are rendered between the same parties on the same issues . . . [t]he remedy is appeal from the second judgment, not collateral attack upon it. . . . If the second court itself has jurisdiction and decides that the first court did not have jurisdiction, this decision *even though erroneous* is conclusive unless reversed on appeal. If the case subsequently comes up in a third state, or in

the *state that rendered the first judgment*, it is the second judgment that is binding." Robert A. Leflar, American Conflicts Law § 81 (3d ed. 1977) (emphasis added).[1]

There is no "roving public policy exception to the full faith and credit due judgments." *Baker*, 522 U.S. at 233 (quotation marks and emphasis deleted). Nor is there a roving exception to the credit due a last-in-time judgment when the first and third fora are the same. The unifying intent of Article IV, Section 1, is the same whether a third state or the first state is asked to recognize a second state's judgment that conflicts with a first state's initial judgment. Some state courts have failed to heed the federalizing command of the Full Faith and Credit Clause in this context in the absence of a definitive holding from this Court addressing the conflict-of-judgments question raised in this petition. The issue has been ripe since at least 1969 and awaits this Court's attention.

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[1] The most recent edition of the Leflar treatise softens its criticism of those states that disregard the last-in-time rule when asked to enforce a judgment contrary to an earlier judgment from their own state, but does cite as "persuasive[]" Justice Ginsburg's argument that the last-in-time rule should control even these situations. Luther L. McDougal, III, et al., American Conflicts Law, § 69 & n.9 (5th ed. 2001).

CONCLUSION

The petition for a writ of certiorari should be granted.

July 17, 2008

Respectfully Submitted,

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APPENDIX

APPENDIX A

COURT OF APPEALS OF OHIO
FIFTH DISTRICT, FAIRFIELD COUNTY

Nos. 2006-CA-71, 2006-CA-72

[Filed November 19, 2007]

Elizabeth Stauber and [J.M] and [T.M.] Minor Children, by and Through their Mother and Next Best Friend Elizabeth Stauber,	)
Plaintiffs-Appellants	)
v.	)
James S. McGrath,	)
Defendant-Appellee.	)

Civil appeals from the Fairfield County Court of Common Pleas, Case No. 06-PA-00111 & 06 DR 00668.

GWIN, P.J.

{¶ 1} These are two appeals consolidated for purposes of this opinion. In appeal 06 CA 72, [J.M.] and [T.M.], minors, by their mother and next friend Elizabeth Stauber, appeal the judgment of the Court

of Common Pleas of Fairfield County in Case Number 06 PA 111. In this case the court dismissed the children's complaint to find appellee James McGrath is their father. Appellants assign four errors to the trial court:

{¶ 2} "I. THE TRIAL COURT ERRED IN RULING THAT A JUDGMENT ALLOWING THE DEFENDANT-APPELLEE JAMES MCGRATH TO RESCIND HIS ACKNOWLEDGEMENT OF PATERNITY WAS RES JUDICATA, THEREBY DISMISSING A SUBSEQUENT ACTION FOR PARENTAGE AGAINST MCGRATH BROUGHT BY THE PLAINTIFF-APPELLANT MINOR CHILDREN.

{¶ 3} "II. THE TRIAL COURT ERRED IN ITS APPLICATION OF RES JUDICATA TO THE PREJUDICE OF THE PLAINTIFF-APPELLANT MINOR CHILDREN, AND MUST BE REVERSED UNDER THE PLAIN-ERROR DOCTRINE TO PREVENT A MANIFEST MISCARRIAGE OF JUSTICE AGAINST THE MINOR CHILDREN.

{¶ 4} "III. THE TRIAL COURT ERRED IN FINDING THAT THE PLAINTIFF-APPELLANT'S MINOR CHILDREN HAVE ENGAGED IN VEXATIOUS LITIGATION AS CONTEMPLATED BY R.C. 2323.51, AND GRANTING DEFENDANT-APPELLEE MCGRATH'S MOTION FOR ATTORNEY'S FEES AND EXPENSES.

{¶ 5} "IV. THE TRIAL COURT ERRED IN GRANTING DEFENDANT-APPELLEE'S OBJECTION AND MOTION TO STRIKE FROM THE RECORD DNA TEST RESULTS FROM PLAINTIFFS' MOTION TO PRESERVE DNA SAMPLES AND TEST RESULTS."

{¶ 6} In appeal 06 CA 71, Elizabeth Stauber, [J.M.] and [T.M.] appeal the judgment of the Court of Common Pleas, Domestic Relations Division in Case Number 06 DR 668.In this case, the court sustained appellee James McGrath's motion for relief from judgment brought pursuant to Civ.R. 60(B), and refused to enforce appellants' foreign judgment from the State of California, which established paternity and ordered support. Appellants assign three errors in this appeal:

{¶ 7} "I. THE TRIAL COURT ERRED IN GRANTING DEFENDANT MCGRATH'S MOTION FOR RELIEF FROM THE CALIFORNIA JUDGMENTS BECAUSE THE CALIFORNIA JUDGMENTS WERE ENTITLED TO FULL FAITH AND CREDIT.

{¶ 8} "II. THE TRIAL COURT ERRED IN GRANTING DEFENDANT MCGRATH'S MOTION FOR RELIEF FROM THE CALIFORNIA JUDGMENTS BECAUSE IT EFFECTIVELY 'REVERSED' A CALIFORNIA DECISION WHICH MCGRATH FAILED TO APPEAL IN CALIFORNIA.

{¶ 9} "III. THE TRIAL COURT ERRED IN GRANTING DEFENDANT MCGRATH'S

MOTION FOR RELIEF FROM THE CALIFORNIA JUDGMENTS BECAUSE IT IS NOT UNJUST FOR MCGRATH TO COMPLY WITH THOSE JUDGMENTS."

{¶ 10} On [redacted], 2000, Elizabeth Stauber gave birth to twin sons, [J.M.] and [T.M.]. On June 26, 2000, James McGrath executed an Acknowledgment of Paternity Affidavit with the Ohio Department of Human Services.

{¶ 11} On March 6, 2001, Stauber and McGrath signed an Agreed Entry with the Fairfield County Court of Common Pleas, allocating parental rights and responsibilities between them and agreeing to undergo genetic testing to establish the father-child relationship between McGrath and the twins. The agreement acknowledged Stauber and the twins would be moving to California. Stauber did not submit herself or the twins for the genetic testing, and she moved with the children to California. The children have never been back to Ohio.

{¶ 12} On June 25, 2001, James McGrath filed a complaint in Fairfield County for rescission of the acknowledgement of paternity. On August 27, 2002, the trial court ordered Stauber to submit herself to genetic testing within thirty days or an order would be issued stating James McGrath was not the father of the twins. A Nunc Pro Tunc Entry was filed on August 28, 2002 to include the twins for genetic testing. Stauber did not submit herself and the twins for genetic testing, and James McGrath moved for summary judgment on October 15, 2002. On March 12,

2003, the trial court issued an order stating James McGrath was not the biological father of the twins.

{¶ 13} Stauber appealed the ruling to this court. We rejected Stauber's claim the Fairfield County court lacked jurisdiction, but remanded the matter to give her one more opportunity to submit to genetic testing. She again failed to do so.

{¶ 14} On March 31, 2004, the trial court issued a judgment entry granting McGrath's motion for summary judgment, finding the paternity acknowledgments were rescinded, and finding no parent-child relationship existed between McGrath and the twins. On appeal, this court affirmed, finding summary judgment in favor of James McGrath was properly based on the law of the case. Stauber did not appeal to the Ohio Supreme Court, or file a motion for Civil Rule 60(B) relief.

{¶ 15} While in California, both children sought medical attention. [T.M.] has Asperger's syndrome, a mild form of autism. [J.M.] has epilepsy and has a cyst on his right temporal lobe. [J.M.]'s doctor states surgery to remove the cyst is absolutely medically necessary.

{¶ 16} Stauber filed a personal injury lawsuit against James McGrath in the State of California alleging [J.M.]'s brain condition was the result of McGrath striking her when she was pregnant.

{¶ 17} Stauber did not have health insurance, and could not obtain it on her own because of her children's pre-existing conditions. She married, however, and her

husband, Ronald Stauber, attempted to adopt the twins so he could add them to his insurance. However, McGrath fought the adoption, and would only give consent if the Stauber dropped the personal injury suit against him. Elizabeth Stauber refused to do so, and Ronald Stauber could not adopt the children. McGrath's action in contesting the adoption is inconsistent with his contention he is not legally the father of the twins.

{¶ 18} In the State of California, [J.M.] and [T.M.], through a guardian ad litem, filed actions for paternity and support. McGrath's California attorneys moved to dismiss the suit, arguing Ohio's judgment should be binding on California under the Full Faith and Credit Clause and because res judicata barred California from reconsidering the paternity of the children. The California court found it could not accord full faith and credit to the 2004 Ohio judgment because Ohio did not properly exercise jurisdiction; it also found res judicata was no bar to a judgment in California. The California court denied McGrath's motion to dismiss, holding [J.M.] and [T.M.]'s rights were never appropriately addressed by the Fairfield County Court of Common Pleas.

{¶ 19} The California court found James McGrath is the father of [J.M.] and [T.M.]. Elizabeth Stauber then sought orders regarding the payment of child support, medical expenses and insurance coverage, which the court granted, including a judgment for arrearages and reimbursements. Stauber and the children then filed the California judgments for enforcement pursuant to UFISA in Case Nos. 06 MI 4,

5, 6, and 7. These were consolidated into Case No. 05 DR 00668 in Fairfield County.

{¶ 20} Finally, Stauber took the twins for DNA testing, which showed James McGrath is the biological father of [J.M.] and [T.M.] with a 99.99 percent chance of probability.

{¶ 21} We will address the issues in the appeal in the paternity case first.

I & II

{¶ 22} In their first two assignments of error, appellants argue the court should not have dismissed the complaint to establish McGrath as the father of the children.

{¶ 23} The trial court found the matter had been fully adjudicated and the matter was now res judicata. The court held appellants are collaterally estopped from asserting appellee is the father of the children. The court concluded neither it nor any other court has jurisdiction to consider the matter, and accordingly dismissed the matter pursuant to Civ. R. 12(B)(1) and (6).

{¶ 24} Our standard of reviewing a court's dismissal for want of subject matter jurisdiction under Civ. R. 12(B)(1) is to determine whether the complaint raises any cause of action cognizable in the forum, see *State ex rel. Bush v. Spurlock* (1989), 42 Ohio St.3d 77.Our standard of reviewing a dismissal for failure to state a claim upon which relief may be granted, made pursuant to Civ. R. 12(B)(6) is to construe all the

factual allegations, and all the reasonable inferences drawn from the factual allegations, in favor of the plaintiff. If it appears the plaintiff can prove no set of facts warranting relief, then dismissal pursuant to Civ. R. 12(B)(6) is appropriate. See, e.g. *State ex rel. Fuqua v. Alexander,* 79 Ohio St.3d 206, 1997-Ohio-169, 680 N.E.2d 985.

{¶ 25} Appellants assert the doctrine of res judicata does not bar the children's complaint for determination of paternity. In *Norwood v. McDonald,* (1943), 142 Ohio St. 299, the Ohio Supreme Court defined the doctrine of res judicata. A previous valid judgment on the merits, without fraud or collusion, entered by a court of competent jurisdiction, is conclusive of the rights, questions, and facts in issue, as to the parties and those in privity, in all subsequent actions in the same or any other judicial tribunal or concurrent jurisdiction, *Norwood* at 305.

{¶ 26} In *Knapp v. Knapp* (1986), 24 Ohio St.3d 141, 144-145, 493 N.E.2d 1353, the Ohio Supreme Court held, "[F]inality requires that there be some end to every lawsuit, thus producing certainty in the law and public confidence in the system's ability to resolve disputes. Perfection requires that every case be litigated until a perfect result is achieved. For obvious reasons, courts have typically placed finality above perfection in the hierarchy of values." Finality is particularly compelling in a case involving determinations of parentage, visitation and support of a minor child. *Strack v. Pelton* (1994), 70 Ohio St.3d 172, 637 N.E.2d 914.While *Knapp* dealt with a motion made pursuant to Civ. R. 60(B), the principle enunciated in *Knapp* applies here as well. This case

has been litigated and re-litigated, and the parties have expended time and money which no doubt could have been used better for these children. It is time for the matter to be final.

{¶ 27} While appellants' arguments may be emotionally attractive, nevertheless, there is a final judgment entered by a court of competent jurisdiction, affirmed by this court, and not appealed to the Ohio Supreme Court, which is dispositive of the issues raised in this case. The trial court was correct in finding neither it nor any other court has jurisdiction to entertain a new action on the same issues.

{¶ 28} We find the court did not err in dismissing the parentage action. Accordingly, the first and second assignments are overruled.

IV

{¶ 29} In light of our holding in I and II supra, the fourth assignment of error is overruled.

III

{¶ 30} In their third assignment of error, appellants argue the court should not have found their actions herein are frivolous. The trial court held they had engaged in a calculated effort to cause appellee a tremendous economic burden.

{¶ 31} The decision to impose sanctions lies within the discretion of the trial court, *State ex rel. Fant v. Sykes* (1987), 29 Ohio St.3d 65, 505 N.E.2d 966. Whether there are good legal grounds to support a

complaint, however, is a question of law reviewable under a de novo standard, *Passmore v. Greene City. Bd. of Elections* (1991), 74 Ohio App.3d 707, 712, 600 N.E.2d 309.When reviewing a trial court's decision to impose sanctions an appellate court must determine: "(1) whether any legal grounds for the pleading exist as a matter of law; and if so, (2) whether the trial court abused its discretion in its determination of whether there was a willful violation of the Rule." *Lorain v. Elbert* (Apr. 22, 1998), Lorain App. No. 97CA006747 (citations omitted). Civ.R. 11 employs a subjective bad faith standard, *Stone v. House of Day Funeral Services., Inc.* (2000), 140 Ohio App.3d 713, 721, 748 N.E.2d 1200.

{¶ 32} We find the filing of this action was not frivolous, and consequently the court erred in awarding sanctions. The third assignment of error is sustained.

{¶ 33} We turn now to the assignments of error in the case to enforce the California orders.

II & III

{¶ 34} Civ. R. 60(B) provides:

{¶ 35} "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B);

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation."

{¶ 36} In *GTE Automatic Electric Company v. ARC Industries* (1976), 47 Ohio St.2d 146, 351 N.E.2d 113, the Supreme Court held to prevail on a motion brought pursuant to Civ. R. 60(B), the movant must demonstrate: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ. R. 60(B); and (3) the motion is made within a reasonable time, and where the grounds for relief are Civ. R. 60(B)(1), (2), or (3), not more than one year after the judgment, order, or proceeding was entered or taken.

{¶ 37} McGrath's motion did not specify under what section he sought relief, but his memorandum in support argued appellant Stauber committed fraud; it would be inequitable to enforce the judgment; and other relief is justified, because the California court erred in refusing to honor the previous Ohio order.

{¶ 38} The California court declined to enforce the Ohio judgment, finding Ohio lacked jurisdiction over the children. This court had already determined Ohio had jurisdiction over the children, see *McGrath v. Saret* (December 26, 2003), Fairfield App. No. 03CA26; *McGrath v. Saret,* Fairfield App. No. 04CA27, 2005-Ohio-217. The California court could not overrule this ruling.

{¶ 39} As stated supra, there is a final judgment entered by a court of competent jurisdiction, affirmed by this court, and not appealed to the Ohio Supreme Court, entered prior to the California order. The trial court could not enforce any order contrary to this Ohio judgment. However, we find the trial court exceeded its jurisdiction in the manner in which it dealt with the issues.

{¶ 40} The trial court's judgment entry sustained McGrath's Motion for Relief from Judgment and held the California decision is void. The court vacated the California judgment and dismissed the Motion to Enforce the Foreign Judgment. We find the court erred in doing so.

{¶ 41} No state court has jurisdiction to vacate a judgment entered in another state. While Ohio has the authority to declare a foreign judgment unenforceable in Ohio, the California judgment cannot be vacated except in the jurisdiction in which it was entered. California, or any other state analyzing these conflicting decisions from Ohio and California, may decide to enforce the California judgment over our Ohio decisions in this matter.

{¶ 42} The second and third assignments of error are sustained.

I

{¶ 43} Appellants' first assignment of error argues the trial court should have afforded the California judgment full faith and credit and should have sustained their motion to enforce it. We do not agree. The California judgment is simply not enforceable in Ohio.

{¶ 44} The first assignment of error is overruled.

{¶ 45} For the foregoing reasons, the judgment of the Court of Common Pleas of Fairfield County, Ohio in appellate number 06 CA72, on appeal from Common Pleas No. 06PA00111, is affirmed in part, and reversed as to the award of sanctions. The judgment of the court in appellate number 06 CA 71, on appeal from Common Pleas No. 05 DR 668 is affirmed in part and reversed in part and final judgment is entered pursuant to App. R. 12: Pursuant to App. R. 12(B) we hereby enter the judgment the court should have entered: the Motion to Enforce the Foreign Judgment is overruled, and the California judgment appellants sought to enforce is stricken. The Motion for Relief from Judgment is moot.

GWIN, P.J., and HOFFMAN, J., concurs in part, dissents in part, and EDWARDS, J., concurs, in part.

{¶ 46} I respectfully dissent from the majority. I would sustain Appellant's first and second

assignments of error in Case No.2006-CA-71.[1] The California Court found the Ohio decree was not entitled to full faith and credit because the minors had been denied due process in the Ohio Court proceeding. See, *Durfee v. Duke* (1963), 375 U.S. 106.A judgment rendered in violation of the due process clause is void, subject to collateral attack, and not entitled to full faith and credit elsewhere. *Klienfeld v. Link* (1983) 9 Ohio App 3d 29.

{¶ 47} Appellee chose not to contest, via appeal, the validity of the California Court's decision not to afford the Ohio Court's decree full faith and credit, despite having appeared and defended in California on the minors' complaint there. Appellee does not claim he was denied due process by the California Court; rather, he attempts to collaterally attack that judgment in Ohio via his motion for relief from that judgment.

{¶ 48} Appellee is asserting his argument in the wrong forum. He should have made the argument via appeal in California. I believe the California Court's judgment is entitled to full faith and credit in Ohio, and subject to enforcement.

2006-CA-72

{¶ 49} I concur with the majority to overrule Appellants' first, second, and fourth assignments of error, but disagree with its stated reasons for doing so.

---

[1] Affording full faith and credit to the California Court's judgment renders Appellants' third assignment of error in 2006-CA-71 moot.

Because I find the California Court's decision is entitled to full faith and credit and it preceded in time Appellants' complaint in this case, I believe these assignments of error are moot and any further judicial proceedings thereon unnecessary. It is for that reason I concur with the majority in affirming the trial court's dismissal of Appellants' complaint.

{¶ 50} Finally, I concur in the majority's decision to sustain Appellants' third assignment of error reversing the trial court's finding the action was frivolous and awarding sanctions.

EDWARDS, J., Concurring in Part.

{¶ 51} I concur with the opinion of Judge Gwin regarding the four assignments of error in Case No.2006-CA-72. I write separately to explain why I find that the trial court erred in finding that the appellant minor children have engaged in vexatious litigation.

{¶ 52} While I concur that the paternity case filed by the appellant-minor children was correctly dismissed by the trial court, it is arguable that the pursuit of such case was in the children's best interest. And, there is case law in Ohio that indicates some type of relief may be available to a child or children whose best interests were not adequately represented in a paternity case. See *Ransome v. Lampman* (1995), 103 Ohio App.3d. 8, 658 N.E.2d 313.

{¶ 53} I concur with Judge Gwin as to the analysis and disposition of Case No.2006-CA-71.

APPENDIX B

IN THE COURT OF COMMON PLEAS
FAIRFIELD COUNTY, OHIO
DOMESTIC RELATIONS DIVISION

CASE NO. 05 DR 668

[Filed November 9, 2006]

ELIZABETH STAUBER, ET. AL.	)
	)
PLAINTIFFS,	)
	)
VS.	)
	)
JAMES MCGRATH	)
	)
DEFENDANT.	)
	)

JUDGE: JACKSON

JUDGMENT ENTRY

This matter came on for non-oral hearing upon Defendant's Motion for Relief from Judgment pursuant to Rule 60(B) and various subsections thereof and the motion of the Plaintiffs to liquidate and reduce to judgment foreign judgments.

Upon motion by the Defendant, Judge Berens and Judge Martin of the Fairfield County, Ohio Common Pleas Courts, General Division, with the consent of the Plaintiff, did consolidate Case Nos. 06 MI 4, 06 MI 5, 06 MI 6 and 06 MI 7 on the docket of the Domestic Relations Division of the Fairfield County, Ohio Common Pleas Court, for final determination by this Court of all issues relating to said foreign judgments. The judgment so transferred were foreign judgments rendered by the Superior Court of the State of California for the County of Los Angeles arising from support orders issued by said court in favor of the Plaintiff, Elizabeth Stauber, f.k.a. Cook, f.k.a. Saret, on behalf of her two minor children, and against the Defendant in this case.

The Court has fully considered Defendant's Motion for relief under O.R.C.P. 60(B), the Plaintiffs' Memorandum Contra Defendant's Reply Memorandum, and the case law, statutory law and constitutional law cited by both counsel.

The Court after reviewing this matter finds that the Motion of the Defendant for Relief from Judgment is well taken and is hereby sustained. This Court specifically finds that the determination by this Court in Case No. 01 PA 94, Fairfield County Common Pleas Court, Domestic Relations Division, and the later affirmation of that decision by the Ohio Fifth District Court of Appeals, which order was never appealed to the Ohio Supreme Court, constituted a full and final determination that the Defendant herein was not and is not the father of the minor children in question in this case and that no parent-child relationship exists between the Defendant and either child. This Court

finds that said determination was entitled to full faith and credit under Article IV, Section 1 of the United States Constitution in any Court of other jurisdiction in the United States of America. Accordingly, this Court finds that the decision by the Superior Court of the State of California for the County Los Angeles in Case No. BF02 6800 determining that the Defendant was the father of the minor children is void and any judgments arising therefrom for child support, payment of children's medical expenses, payment of the Plaintiff's attorneys fees, and/or payment for health insurance premiums or any other expenses for the mother of the children, the guardian ad litem for the children or the children themselves are void.

Accordingly, this Court does hereby sustain the Motion of the Defendant and sets aside and vacates the judgments filed with this Court on March 24, 2006 and which have been styled as Case Nos. 06 MI 4, 06 MI 5, 06 MI 6 and 06 MI 7 on the docket of the Court of Common Pleas, Fairfield County, Ohio, General Division.

This Court does hereby dismiss the Motion of the Petitioners, [J.M.] and [T.M.] for an order to liquidate and reduce to judgment child support, arrearages, owed by the Respondent, James McGrath, with prejudice inasmuch as said Motion was based upon the judgments which this Court finds to be void.

The Clerk of this Court is hereby ordered to journalize this Judgment Entry and to make notation of the aforesaid Judgment Entries that said judgments have been vacated.

IT IS ORDERED. Costs to the Plaintiffs.

There being no just cause for delay, this judgment shall be a final appealable Order.

/s/
S. FARRELL JACKSON
Judge of Said Court

The Clerk of Courts is directed to serve upon all parties notice of this judgment and its date of entry upon the journal and pursuant to Rule 5(B) of the Ohio Rules of Civil Procedure.